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Results from RSDs Innovative Strategic Data Analysis and Forward Looking Research Program

Research and Statistics Division

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1. Introduction

In the past 10 years, research has been driven by immediate and short-term demands. It has also been less empirical and forward looking and far more reactive. Beginning in late 2014, as part of transition planning, the Research and Statistics Division (RSD) embarked on a series of projects that moved beyond these parameters by exploring strategic data analysis from an innovative lens and boosting the Department's forward looking research capacity. The Deputy Minister of Justice directed RSD to look at old issues in new ways, experiment with new methods influenced by social media, to include non-traditional stakeholders, and to identify areas that may impact the Department in the future. This report highlights the breadth and depth of activities undertaken as part of this work.

2. Methodology

RSD used a variety of methods and approaches for gathering information. The objective was for RSD to look at new and renewed ways to do its work. Policy issues are more complex and interconnected; research must adapt to this reality and dig deeper to fully understand these multifaceted issues.

Topics were not defined in the traditional sense. RSD went outside of traditional criminal justice system mandates and boundaries to identify issues occurring in society that may impact the justice system in the future as well looking at longstanding issues in new ways.

Below highlights the breadth and depth of projects that were completed as part of this process.

3. Results

3.1 Look at current issues in new ways and re-establish old networks

RSD developed a series of "provocative papers" to highlight the following issues: international alternatives to sentencing reform; international alternatives to criminalization of drugs; mental health in the criminal justice system; advancing legal literacy; and the need for extensive bail reform. Summaries of these papers are included below.

3.1.1 International alternatives to sentencing reform – contract with Professor Julian Roberts

Canada's last most significant sentencing reform took place about 20 years ago. Since then piecemeal amendments have been made to sentencing legislation. In a paper written by Julien Roberts, he provides three examples of sentencing models used internationally. The first is a sentencing guideline used in Minnesota that utilizes a two-dimensional grid to help judges determine sentences. The second, used in England and Wales, requires judges to proceed through step by step procedures to determine a sentence. The English model includes sentencing ranges. The idea is that if all courts follow the same steps, decisions across courts should be more consistent. Finally, Israel provides guidance by words, which is similar to the English model, but without any sentencing ranges. The sentencing court is to create its own Proportionate

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Sentencing Range and then determine whether to deviate from that range. The international experience suggests that guidelines are the most effective way to achieve policy goals such as reducing the use of custody for disproportionately.

3.1.2 Criminalizing Drug Possession and Use: Different Policy Approaches and International Alternatives – written by RSD researcher, Kyle Coady

This paper provided a platform to dispel the common myths and anxieties associated with the consumption of illicit substances and the criminalizing practices emanating from official responses to drug possession. Having reviewed the evidence, we return to the central question: If Canada adopted an approach other than criminalization, what would this look like? In terms of outcomes there could be a reduction in not only usage rates but also in the harms associated with drugs and drug use. Regardless of the approach, Canadians could expect a change in the role of police, prosecutors, doctors and social service workers who work with communities, drug users and their families.

3.1.3. Mental Health in the Criminal Justice System – Contract with Justice Richard Schneider

Justice Schneider tells a compelling story that illustrates how investments in the civil mental health system will reduce the reliance on the criminal justice system. He argues that the high prevalence of mental health issues in the criminal justice system is partially the result of the following failures in the civil system: hospitalization is based on dangerousness instead of illness and/or a need for treatment, there is an inability to involuntarily treat those who are hospitalized (so long as they are capable of consenting), and discharge from the hospital occurs as soon as the statutory criteria are met even if the patient is not stable. Justice Schneider suggests a model federal Mental Health Act could alleviate some of these concerns in the civil system and bring uniformity across Canada. In 1987, the ULCC proposed a model provincial/territorial Uniform Mental Health Act and Justice Schneider suggested this could be a starting point for federal involvement. He argues that we cannot continue to try and fix the problem in the criminal justice system if the problems partially resolve outside of the criminal system.

3.1.4. Cultivating Legal Literacy – contract with PLEI practitioner Sarah McCoubrey

The author argues that there is a need for strong, national leadership by the Department of Justice on legal literacy as a key component of access to justice. Ms. McCoubrey highlights research by the Department that shows that legal problems can trigger additional problems and cluster when left unresolved. Reducing the stress and cost of legal disputes is directly related to the timing of intervention. Early steps are simpler, cheaper and address an issue before it has spiraled.

3.1.5. Broken Bail – contract with Professor Cheryl Webster

There are not only more accused in pre-trial detention than sentenced custody (a trend dating back to 2004/2005), there is a growing number of individuals with “failure to comply with a court order” as their most serious offence (1/8 of all accused in court in 2013). Professor Webster contends that previous bail recommendations by academics, FPT officials, and justice system professionals can be characterized as “tinkering” with the current bail system. Given that the problems in bail are

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presently systemic and endemic – affecting every aspect of the bail system – the introduction of a new Bail Reform Act may more effectively open up the necessary space for cultural change than the “tinkering” which has been proposed to date. The paper argues that a new bail regime should introduce strong incentives to discourage risk averse behaviour, improve public education, address conditions and consequences of violations of release, reduce the reliance on sureties, and revisit reverse onus provisions.

3.2 Engaging non-traditional Stakeholders / look at issues across sectors- Roundtables

RSD hosted two roundtables related mental health and FASD/neurocognitive disorders. This first one engaged first responders not traditionally working in the criminal justice system including the health and social service sector. The second roundtable on FASD/neurocognitive disorders engaged psychologists and psychiatrists who work in the forensic mental health system to see how the courts could better leverage the existing forensic mental health system to identify accused with FASD.

3.2.1. First Responders to Mental Health

Fifteen participants attended the roundtable, seven of whom prepared short papers outlining their work and programs prior to the event. The meeting sparked a stimulating discussion on promising practices, with several agreed upon principles, including the importance of collaboration across sectors, training for front-line prevention, and programs to keep those with mental health issues out of the criminal justice system whenever possible. One paper lays out a proposed course of action, with the Department acting as a coordinating agency focusing on aboriginal and mental health issues. Rupert Ross, a retired assistant Crown Attorney from northern Ontario, has identified a program of “whole-family healing” to reduce aboriginal youth suicide attempts. His idea of an Aboriginal-led, family-based response is modelled after the Tommy Beardy Family Healing Center at the Muskrat Dam First Nation, but with three modifications: the trigger for service would not be spousal violence, but youth suicide attempts; there would be overt discussion of the failure of residential schools to help children develop emotional competencies; the express focus of the program would be traditional teachings of healthy relations. Representatives from Public Safety Canada attended the roundtable and discussions are being held on next steps to advance some of the ideas discussed at the roundtable.

3.2.2. Forensic Mental Health and Fetal Alcohol Spectrum Disorder (FASD)

RSD hosted a roundtable with 13 experts in forensic mental health and FASD on how justice decision makers might obtain information about an accused’s neurocognitive disorders, and in particular how to broaden and leverage the existing forensic mental health system more effectively. Generally, the forensic mental health system does not assess individuals for neurocognitive disorders, including FASD. Participants also agreed that the forensic system is well suited to take on this role and that the costs would be minimal. Participants recommended training of forensic psychiatrists and psychologists to learn how to do a complete neurocognitive assessment would increase the ability of the criminal system to respond to individuals with these disabilities. A modest investment by the Department could pay considerable dividends as a

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model of policy capacity development at the local level while supporting our Minister and federal priorities. Advancing this recommendation by participants is already occurring among Justice Officials.

3.3. Forward Looking Research Program

RSD engaged in a number of activities that fall under the umbrella of forward-looking research planning. Many of these activities looked at issues outside of traditional mandate responsibilities and engaged non-traditional stakeholders. These projects looked at issues proactively and some used newer technologies/innovative methods. Projects included a Delphi with external experts, an internal consultation, a scenario building workshop, a series of papers on future justice topics (referred to as GISTS), a series of short papers on youth in Canada, a crowdsourcing exercise with Canadian law students, a social media monitoring project, an analysis of new policy techniques, and a review of big data and a strategy development session for big data. Each of these projects are highlighted below.

3.3.1. Delphi – External traditional and non-traditional experts

An External Delphi engaged thirty-three identified experts and thought leaders with varying areas of expertise: Aboriginal issues, culture, urban issues, family, national security, intimate partner violence, youth, health and mental health, community engagement, political science, immigrants, future studies, sustainability, economy and sharing economy, technology, international crime, surveillance, environment, poverty, urban issues, social entrepreneurs, international security, organizational learning/future of work, legal services, technology law, space law, IP law, and public policy. Consistent with the traditional Delphi, RSD used the same group of participants during all three rounds, but instead of seeking consensus on one question, RSD worked toward building a list of issues, their interconnections, and how the Department might face/deal with them moving forward. The Delphi unfolded as follows: In Round 1, RSD asked respondents to look forward 10-15 years and, based on their area of expertise, characterize the most pressing issues that Canada and/or Canadians may face. In Round 2, RSD sought to add a level of complexity to our understanding of the issues identified in round 1, by asking respondents to review the issues initially identified and to discuss interconnections, identify gaps and blind-spots, and provide any additional missing information. The value of the diversity of perspectives became evident in this round. In the third and final round, RSD asked participants to take a more active and concrete approach, to indicate where the Department might be able to make a difference and how we might start to do that. There were many issues identified that warrant further investigation as to how they may impact the Department in the future.

3.3.2. Internal (Departmental) Consultation

The same question asked as part of the Delphi (future issues impacting Canada) were asked to members of Policy Committee Working Group. RSD received seventeen responses representing groups and individuals including responses from regional offices, portfolios, and on one question internal to the Department – from regional offices, portfolios, the Public Law Sector, and the Policy Sector. There was some overlap in topics identified from the Delphi, especially in the areas of technology.

3.3.3. Scenario Building Workshop – Contract with Infinite Futures (Wendy Schultz)

RSD contracted with a futures research company in the United Kingdom to lead a scenario building workshop that was held on May 21, 2015 in Ottawa involving 25 participants. Participants were identified through the Policy Committee Working Group and there were also representatives from Public Safety Canada, Policy Horizons Canada, and the Privy Council Office's Innovation Hub. The workshop used three futures tools to frame and guide the scenario-building process: the three horizons framework, the "axes of uncertainty" scenario method, and the Verge general practice framework. It built on the topics identified through the Delphi and internal discussions.

3.3.4 GISTS – contract with firm Shaping Tomorrow

A Gist is a human curated document that identifies potential opportunities and risks within issues and is designed to spark strategic conversations within organizations. A Gist is developed using software called "Extractor Tools" that sifts the internet for relevant news on a given subject, extracts the forward looking information, and summarizes the data into bite size forecasts. This new approach to identifying trends has proven to be both timely and extremely cost efficient for RSD. RSD contracted with this firm for four papers: shadow economy; future of justice; social financing; and social engagement.

3.3.4.1 Shadow Economy

This GIST explored three areas of the shadow/underground economy. The first area explored was the hidden/informal market (e.g., fees for service, unreported taxes). The report indicates that two-thirds of money from the informal economy is still spent on the formal economy. The second area explored was the grey market (e.g., importing of knockoffs, infringes on intellectual property rights). The third area explored was the black market (e.g., illegal activities, weapons, and human trafficking). The value of the black market is estimated at 1.8 T US.

3.3.4.2 Future of Justice

This Gist identifies six factors shaping the future of justice: 1) increased competition as actors from outside the legal profession leverage new technologies ahead of established law firms; 2) new business models that are disrupting conventional approaches to delivering legal services; 3) access to the law brought about by current and emerging digital technologies that provide access to legal information and opportunities for DIY Justice and online court processes; 4) client empowerment, which is related to people's preference to use online communication tools to gather information and to access services; 5) technology and digital disruption, that is, changes in technology and increased use of internet and in particular mobile devices and smart phones are challenging our current ways of communicating with users, requiring pivots to new platforms/approaches; and 6) shifts in the legal profession, and specifically, new understandings of what it means to have a career in law, the emergence of virtual law firms and changing client expectations of clients, all force firms to rethink how they do business and put more power into the hands of the clients.

*Research Report***3.3.4.3 Social Financing**

Results from this paper show that public and private sector organizations, such as Goldman Sachs and Bloomberg Philanthropy, are increasingly embracing new approaches to fund social programs. There are examples in both the US and UK, where social impact bonds are used to reduce recidivism among offenders. The US government has created a business classification (Social Purpose Corporation) for corporations that include social goals and considerations in their articles of incorporation, signaling an acceptance of social entrepreneurship. The findings from the Gist suggest that these examples will be common place by 2040, where traditional social service organizations will share a significant amount of their burden with stakeholders from the social financing arena. Building on examples found in public sectors outside Canada, Justice could, as Public Safety has been doing, explore opportunities to support social financing including social impact bonds.

3.3.4.4 Social Engagement

This Gist article suggests government must engage citizens via information and communication technologies (ICT) or risk losing citizen interest/support, especially younger generations. Digital tech can bring new voices to policy-making/new sources of innovation. Direct engagement via ICT can lead to 'purer' democracy: increased participation/satisfaction from citizens, bottom-up, user-driven/client-focused, give-and-take/two-way nature, massive collaboration, unprecedented access to data/knowledge. The article notes that governance structures that are more horizontal/participatory, more responsive/efficient, and more transparent, leads to an increasingly well-informed/empowered citizenry.

3.3.5 Future of youth – contracts with three experts in youth issues

Each contractor wrote a think piece on today's younger generation and potential implications for the Canadian government. As background, the RSD identified potential issues affecting younger Canadians, including youth un/underemployment, student debt, the generational income gap, generational tensions in social values, and youth social/political engagement. Contractors identified the following two issues as critical for government: Transition to adulthood and engagement. Today's young people, relative to previous generations, are experiencing a delayed transition to adulthood, characterized by more time at school and living at home (the family home), difficulty paying off student debt and saving for a down payment on a house or condo, and delays starting a career and family. A delayed transition to adulthood – without job security, a mortgage, property taxes, and dependents to care for – may delay youth interest in public life. Without established community roots, young people may be less inclined to engage in social/political affairs. And some youth may be isolated from current affairs news and information, and may not engage because they do not know enough about the subject, not because they are apathetic. New technology has changed the way people, youth in particular, access information and news. If their Facebook friends or Twitter followers do not share content about public affairs, government, or policy, many young people will miss this information.

3.3.5 Crowdsourcing with Canadian Law Students – contract with ThoughtExchange

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RSD contracted with ThoughtExchange, a software platform based on crowdsourcing principles, to see how Canadian law students responded to two key questions: “What will be the main changes in the business of law in the next 5-10 years and why do you think that?” and “What will be some important new areas of law in the next 5-10 years and why do you think that?” The top five responses categories to changes in the business of law are: access to legal services, technology, changing the billing model, job prospects for lawyers, and increased reliance on computing and privacy tools in legal practice. The top five responses to emerging areas in law are: legal aspects of computing and privacy law, environmental law, public law, aboriginal issues, and international law. Included is the breakdown of response categories by popularity of response. Findings from this exercise confirmed some of the issues identified under the Legal Services Review.

3.3.6 Social Media Monitoring Project – contract with Centre of Excellence for Public Sector Marketing

The Centre of Excellence for Public Sector Marketing has developed sophisticated techniques for scouring the huge amounts of data available on social media to provide clients with insights on online discussion about topics of interest. RSD hired the firm to explore Twitter and Facebook activity on “dissatisfaction with the justice system” in Canada from January to April, 2015. Using key words and methods to remove non-Canadian and other irrelevant content, the analysis found issues related to changes to the assisted suicide law, the right to wear a hijab in court, Bill C-51, “get tough” law and women in the Canadian justice system in general were prominent themes. An analysis of the top 21 communities (by volume of tweets) revealed various political, media-based and legal community discussion groups as well as groups coalescing around human rights, religious freedoms and dispersed dissatisfaction with the Canadian justice system. The main take away is the important need to identify the key influencers that might be part of social movements related to justice. This could become a useful tool for locating emerging issues.

3.3.7 Effectiveness of Advancing Technology in Research – written by RSD researcher, Shauna Martin

This study was initiated to better understand how new policy tools can be used from a research perspective. It focuses on six policy tools (nudging, big data, design thinking, innovation hubs/labs, social media, and crowdsourcing) that are a direct result of the advancements of technology. The report found that these tools seek to change the way research and policy are created and shared with the public. The report concluded that at this time, there is no tangible evidence that these methods have been successfully used as tools to undertake policy research where the results were fed into a policy decision. The risks associated with the use of these methods can create a biased response / action / opinion without proper vetting of participants or researchers. More research is needed in this area to make sure these policy tools can be used from a research perspective.

3.3.8 Big Data – Information Management – contract with ES Tunis and Associates

The first part of the project involved a literature review of Big Data applications in Canada and abroad. This also included key-informant interviews with selected Departmental and

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Canadian/International experts on Big Data. A report was prepared and helped inform the discussion at the Strategic Planning Workshop hosted by RSD on November 25th, 2015.

The Big Data Workshop was attended by 20 officials, with representation from the Information Solutions Branch, Litigation Branch, Legislative Services Branch, Communications Branch, Information Law and Privacy Section, Finance and Planning Branch, Business Analytics Unit as well as representation from the Canadian Centre for Justice Statistics, Public Safety Canada, and the Privy Council Office (a list of attendees is included in Annex A).

The research conducted by ESTA found that there are no serious technological impediments that would prevent the Department from moving forward with Big Data projects. The one overarching conclusion that can be derived from this work is that large legal organizations that fail to plan for the implementation of new technologies are likely find themselves at a significant disadvantage from competitive and cost-effectiveness standpoint.

4. Conclusion

The world is complex, fluid, interconnected and interdependent. When we focus on single factors or shut out other perspectives we are vastly oversimplifying the world, its problems and its solutions. This means that we cannot focus on one issue, driver or trend in isolation, but rather how they may interact, magnify or moderate other related factors.

This work solidified the need to do research in new ways. As a result of this work, RSD will continue to look at issues across sectors, and not be restricted by traditional mandates, will include proactive, forward looking research into our planning processes, will establish new and re-establish old networks, and will continue to understand and utilize existing technology and advances in data collection and analysis.

This work also highlighted some several challenges related to governmental organizational structure that make innovation across groups and departments difficult, such as onerous planning and approval processes, strict hierarchical structures, and overlapping and competing mandates. However, public servants can find solutions and shift the way that we do work by building adaptive capacity. By focusing on adaptation, this solution highlights how we work by creating the priority to identify issues, make plans and respond to new and emerging issues. This kind of thinking focuses on imaginative, iterative, collaborative, and human-centered approaches and focuses on building nimble/agile organizations that have a high adaptive capacity.